

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MOTION TO DISMISS

Defendant Walgreen Company (“Walgreens”), pursuant to Fed. R. Civ. P. 12(b)(6), moves to motion to dismiss the Complaint, and, in support of that motion states as follows:

1. Plaintiff's Complaint asserts that the label on Walgreen's branded hydrogen peroxide is fraudulent and misleading because it describes antiseptic uses for the product that Plaintiff claims are not supported by "credible scientific and medical evidence."

1. Plaintiff's claims are preempted by the Food, Drug, and Cosmetic Act ("FDCA"), 21 U.S.C. § 301 *et seq.*, because the product is FDA approved for the described antiseptic uses and the product's label is entirely consistent with FDA labeling requirements.

2. Plaintiff's assertion of a putative ten-state class fails to allege non-Illinois claims and is contrary to Seventh Circuit precedent *In re Bridgestone/Firestone, Inc.*, 288 F.3d 1012, 1018 (7th Cir. 2002).

3. Even if not preempted, Plaintiff's fraud, consumer fraud, and negligent misrepresentation claims do not comply with Rule 9(b) and demonstrate that *reasonable* consumers could not be misled by any claimed misrepresentations because the product is approved by the FDA precisely for the uses that Plaintiff identifies. Plaintiff's claim for unjust enrichment fails because it duplicates the consumer fraud claim. And, Plaintiff's warranty claims fail because of the absence of allegations identifying an express warranty and the absence of allegations of notice and the opportunity to cure.

WHEREFORE, for all the reasons stated in Walgreen's accompanying memorandum of law, Plaintiff's complaint should be dismissed with prejudice.

DEFENDANT WALGREEN CO.,
By:/s/ Christopher Carmichael
One of its Attorneys

Jonathan L. Lewis
Christopher M. Schafbuch
LOWENSTEIN SANDLER LLP
2200 Pennsylvania Ave. NW, Suite 500
Washington, DC 20037
Tel: 202.753.3824
jlewis@lowenstein.com
cschafbuch@lowenstein.com

Christopher W. Carmichael
HENDERSON PARKS, LLC
140 S. Dearborn St., Suite 1020
Chicago, Illinois 60603
Tel: (312) 262-2900
ccarmichael@henderson-parks.com

CERTIFICATE OF SERVICE

The undersigned certifies that on **November 7, 2022**, the foregoing **Motion to Dismiss** was electronically filed with the Clerk of the United States District Court for the Northern District of Illinois by filing through the CM/ECF system, which served a copy of the foregoing upon all counsel of record

By:/s/ Christopher Carmichael